

[Names, Addresses, and Bar Numbers of
Counsel Appear on the Signature Pages]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**ROSEMARY D'AUGUSTA, CAROLYN
FJORD; SHARON HOLMES; DEBORAH M.
and STEVEN J. PULFER; JOHN LOVELL;
GABE GARAVANIAN; JOSE M. BRITO;
SONDRA K. RUSSELL; ANNETTE M.
TIPPETTS; SHERRY LYNNE STEWART;
ROBERT A. ROSENTHAL; LEE B. and
LISA R. MCCARTHY; JUNE STANSBURY;
KEITH DEAN BRADT; DONALD and
DONNA FRY; GARY TALEWSKY; DIANA
LYNN ULTICAN; PATRICIA A.
MEEUWSEN; ROBERT D. CONWAY;
MICHAEL C. MALANEY; Y. JOCELYN
GARDNER; CLYDE D. STENSRUD;
DONNA M. JOHNSON; VALARIE JOLLY;
and PAMELA S. WARD,**

Plaintiffs,

v.

**NORTHWEST AIRLINES CORPORATION
and DELTA AIR LINES, INC.,**

Defendants.

Case No. 3:08-CV-3007-VRW

**JOINT CASE MANAGEMENT
STATEMENT AND
STIPULATED [PROPOSED]
SCHEDULING ORDER**

Date: Wednesday, July 23, 2008
Time: 10:00 am
Judge: Hon. Vaughn R. Walker
Courtroom 6

Defendant DELTA AIR LINES, INC. ("Delta") and defendant NORTHWEST
AIRLINES CORPORATION ("NWA") (collectively, "Defendants"), and Plaintiffs
hereby respectfully submit this Joint Case Management Statement pursuant to the Court's

1 July 16, 2008 Order (Doc. #17), Federal Rule of Civil Procedure 26(f), Civil L.R. 16-9(a),
2 and the Court's Standing Order regarding Contents of Joint Case Management Statement.

3 In anticipation of the case management conference scheduled for Wednesday, July
4 23, 2008 at 10:00 am, the parties have met and conferred and reached agreement, subject
5 to the Court's calendar and approval, on a Stipulated Proposed Scheduling Order
6 (attached hereto as Exhibit A) that will govern discovery and provide for an expedited
7 trial on the merits to begin on Monday, November 10. The proposal calls for a trial of no
8 more than ten (10) days of testimony.

9 The parties believe the proposed schedule satisfies the interests of all parties in
10 having an early and complete determination of this matter and therefore respectfully
11 request that the Court enter the attached Stipulated Proposed Scheduling Order.

12 1. Jurisdiction and Service: This action is brought under Section 16 of the
13 Clayton Antitrust Act, 15 U.S.C. §§ 18, 26. This Court has subject matter jurisdiction
14 pursuant to 15 U.S.C. § 26 and 28 U.S.C. §§ 1331, 1337. No additional parties remain to
15 be served.

16 2. Facts: On April 14, 2008, Defendants announced their intention to combine
17 in an all-stock transaction to create a single airline. One week later, Defendants filed
18 notifications with the Antitrust Division of the United States Department of Justice
19 ("DOJ") pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15
20 U.S.C. § 18a. On June 18, 2008, Plaintiffs filed their Complaint in this action.
21 Defendants answered the Complaint on July 15, 2008.

22 3. Legal Issues: Whether consummation of the merger will substantially
23 lessen competition or tend to create a monopoly in the transportation of airline passengers
24 in the United States in violation of Section 7 of the Clayton Antitrust Act, 15 U.S.C. § 18.

25 4. Motions: Two motions are currently pending: (1) Plaintiffs' Motion to Set
26 Hearing Date to Establish Briefing Schedule and Hearing Date for Plaintiffs' Motion for
27 Preliminary Injunction (Doc. # 8), and (2) Plaintiffs' Ex Parte Application for an Order
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1 Shortening Time (Doc. #7). Both of these pending motions have been rendered moot in
2 light of this Court's July 16, 2008 Order (Doc. #17) and the parties' subsequent agreement
3 to proceed in accordance with the Stipulated Proposed Scheduling Order, which is
4 attached hereto as Exhibit A. The parties have no present plans for the filing of other
5 motions, and as a result they have not incorporated any deadlines for other motions in the
6 Stipulated Proposed Scheduling Order.

7 5. Amendment of Pleadings: The parties do not expect any claims or defenses
8 to be added or dismissed, and as a result deadlines for amending the pleadings have not
9 been incorporated into the proposed Case Management Schedule.

10 6. Evidence Preservation: The parties have undertaken reasonable steps to
11 preserve evidence relevant to this action, including interdiction of any document-
12 destruction programs and any ongoing erasure of e-mails, voicemails, and other
13 electronically recorded material.

14 7. Disclosures: In light of the proposed Case Management Schedule, and to
15 the extent so ordered by the Court, the parties have agreed to forego exchange of initial
16 disclosures under Fed.R.Civ.P. 26(a)(1).

17 8. Discovery: No discovery has been taken to date, and the parties' plans for
18 future discovery are set forth in the proposed Case Management Schedule. As set forth
19 therein, Defendants are prepared to provide Plaintiffs with their Hart-Scott-Rodino filings
20 and filings with the United States Department of Transportation concerning their proposed
21 merger, and Plaintiffs will produce to Defendants all documents with respect to the
22 Plaintiffs' air travel to, from and within the United States.

23 9. Class Actions: This action is not a class action.

24 10. Related Cases: The DOJ is currently conducting a review of the proposed
25 merger under the federal antitrust laws.

26 11. Relief: Plaintiffs are seeking to permanently enjoin the merger on the
27 grounds that it violates Section 7 of the Clayton Antitrust Act, 15 U.S.C. § 18. In
28

1 addition, Plaintiffs are seeking their costs of suit, including a reasonable attorney's fee, as
2 provided by Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.

3 12. Settlement and ADR: At this time the parties agree that ADR procedures
4 are unlikely to be appropriate. The parties have not engaged in settlement discussions.

5 13. Consent to Magistrate Judge for All Purposes: The parties do not consent to
6 have a magistrate judge conduct all further proceedings including trial and entry of
7 judgment.

8 14. Other References: At this time the parties do not believe this case is suitable
9 for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict
10 Litigation.

11 15. Narrowing of Issues: At this time the parties have yet to narrow any
12 substantive issues by motion or agreement, although the parties will attempt to do so prior
13 to trial through stipulations or motions.

14 16. Expedited Schedule: As set forth in the proposed Case Management
15 Schedule, the parties believe this case can be handled on an expedited basis with
16 streamlined procedures to obtain a determination on the merits pursuant to Section 7 of
17 the Clayton Act, 15 U.S.C. § 18.

18 17. Scheduling: The proposed dates for designation of experts, discovery
19 cutoff, hearing of dispositive motions, pretrial conference, and trial are set forth in the
20 proposed Case Management Schedule.

21 18. Trial: The parties agree to try this case to the Court and they expect the
22 length of the trial to be ten (10) days.

23 19. Disclosure of Non-party Interested Entities or Persons: On July 17, 2008,
24 defendant Delta filed its Certification of Interested Entities or Person pursuant to Civil
25 L.R. 3-16, which stated that other than the named parties, there is no such interest to
26 report. Delta also stated that pursuant to Fed.R.Civ.P. 7.1, it does not have any parent
27 corporation and the only publicly held corporation owning 10% or more of Delta's stock
28

1 is J.P. Morgan Chase & Company.

2 On July 15, 2008, defendant NWA filed its Disclosure Statement under
3 Fed.R.Civ.P. 7.1 and Certification under Civil Local Rule 3-16, which stated that other
4 than the named parties, there are no persons, associations of persons, firms, partnerships,
5 corporations (including parent corporations) or other entities that (i) have a financial
6 interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a
7 non-financial interest in that subject matter or in a party that could be substantially
8 affected by the outcome of this proceeding. In addition, pursuant to Fed.R.Civ.P. 7.1,
9 NWA certified that it does not have any parent corporation and no publicly held
10 corporation owns 10% or more of NWA's stock.

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12 Dated: July 21, 2008
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Attorneys for Plaintiffs

Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures,
I attest under penalty of perjury that concurrence in the filing of the Joint Case
Management Statement and Stipulated [Proposed] Scheduling Order has been obtained
from the above signatories.

Dated: July 21, 2008

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EXHIBIT A

[Names, Addresses, and Bar Numbers of
Counsel Appear on the Signature Pages]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**ROSEMARY D'AUGUSTA; CAROLYN
FJORD; SHARON HOLMES; DEBORAH M.
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Plaintiffs,

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**NORTHWEST AIRLINES CORPORATION
and DELTA AIR LINES INC.,**

Defendants.

Case No. 3:08-CV-3007-VRW

**STIPULATED [PROPOSED]
SCHEDULING ORDER**

Date: Wednesday, July 23, 2008
Time: 10:00 am
Judge: Hon. Vaughn R. Walker
Courtroom 6

1 The parties above named, by and through their undersigned attorneys, having
2 conferred and agreed upon a proposed schedule for the disposition of this matter, hereby
3 stipulate and agree as follows:

4 1. The parties waive disclosures under Fed. R. Civ. P. 26.

5 2. On or before August 1, 2008, the defendants shall produce to the plaintiffs the
6 defendants' Hart-Scott-Rodino filings and filings with the United States Department of
7 Transportation concerning their proposed merger, and the plaintiffs shall produce to the
8 defendants all documents with respect to the plaintiffs' air travel to, from and within the
9 United States.
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11 3. The parties may take fact depositions during the period from August 18 to
12 September 5, 2008.

13 4. On or before September 26, 2008, the plaintiffs shall provide to the defendants any
14 expert reports pursuant to Fed. R. Civ. P. 26.

15 5. On or before October 17, 2008, the defendants shall provide to the plaintiffs any
16 expert reports pursuant to Fed. R. Civ. P. 26.

17 6. The parties may take expert depositions if they choose to do so from October 20 to
18 October 31, 2008.
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20 7. The parties will make their pretrial disclosures of witnesses and exhibits and such
21 other filings as the Court may require on November 3, 2008.

22 8. Subject to the Court's availability at a time to be set by the Court, the Court will
23 conduct a final pretrial conference on November 7, 2008.

24 9. Trial in this matter, which the parties estimate will take no more than ten trial
25 days, will commence November 10, 2008.
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1 SO STIPULATED:

2 Dated: July 21, 2008

3 For plaintiffs:

4 ALIOTO LAW FIRM
5 GRAY PLANT MOOTY MOOTY & BENNETT, P.A.

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15 For defendant Northwest Airlines Corporation:

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1
2 Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures, I
3 attest under penalty of perjury that concurrence in the filing of this Exhibit A (Stipulated
4 [Proposed] Scheduling Order) has been obtained from the above signatories.

5
6 Dated: July 21, 2008

By: /s/ Michael F. Tubach

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Attorneys for Defendant
NORTHWEST AIRLINES
CORPORATION

ORDER

Pursuant to the above stipulation, IT IS SO ORDERED.

Dated: July __, 2008.

United States District Judge